

EXHIBIT 14 TO
STATEMENT OF FACTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SEXY HAIR CONCEPTS LLC,)

Opposer,)

vs.)

V SECRET CATALOGUE, INC.,)

Applicant.)

COPY

Opposition No. 125, 739

(SO SEXY)

DEPOSITION OF MARK STILLER

Chatsworth, California

Tuesday, September 28, 2004

Reported by:

MEGAN M. GROSSMAN

CSR No. 12586

Philadelphia Job No. 152101

Los Angeles Job No. 903365

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Deposition of Mark Stiller, taken
on behalf of Opposition, at 9232 Eton Avenue,
Chatsworth, California, beginning at 10:01 a.m.
and ending at 3:46 p.m. on Tuesday, September 28,
2004, before MEGAN M. GROSSMAN, Certified
Shorthand Reporter No. 12586.

1 APPEARANCES :

2
3 For Opposition:

4 BALLARD SPAHR ANDREWS & INGERSOLL, LLP

By: Roberta Jacobs-Meadway, Esq.

5 1735 Market Street

51st Floor

6 Philadelphia, PA 19103-7599

(215) 864-8201

7
8
9 For Defendant:

10 COLUCCI & UMANS

By: Frank J. Colucci, Esq.

11 101 East 52nd Street

New York, NY 10022

12 (212) 935-5700

13
14 Also Present:

15 Donna Federici (Joined proceedings at 1:42 p.m.)

WITNESS: MARK STILLER

1 (Opposer's Exhibit Number 9 was marked for
2 identification by the shorthand reporter.)

3 BY MS. JACOBS-MEADWAY:

4 Q Mr. Stiller?

5 A Yes.

6 Q How often does Sexy Hair Concepts issue
7 promotion sheets of this sort?

8 A We used to be monthly. I believe this year we
9 do a bimonthly promotion sheet. We would also have
10 different sheets for the chains versus the regular
11 distributors.

12 Q In addition to the promotional sheets, are there
13 other advertising media that Sexy Hair Concepts uses?

14 A I believe we discussed before the various
15 promotional media that we use. Just to run through it
16 again, we advertise in trade magazines and consumer
17 magazines.

18 There are some billboard advertising that we
19 have done recently. We do co-op advertising with our
20 distributors. We have our websites. We promote at trade
21 shows.

22 We use all the various p.o.p.'s that we
23 discussed previously. We have our educators and our
24 sales people that are promoting the product. We also
25 would do appearances -- someone like Michael O'Rourke

1 would do appearances on TV shows. We also would have
2 product placement on certain movies.

3 That's what comes to mind at the time. I might
4 have left some out. And, again, Donna might have a more
5 complete list.

6 Q With respect to the professional magazines, can
7 you identify some of those professional magazines that
8 you advertise in?

9 A Yes. Modern Salon, American Salon, Canadian
10 Hairdresser. Those are the ones we do regularly. And
11 then there are a whole lot of others that we do from time
12 to time.

13 Q With respect to the personal appearances, have
14 you ever seen any of the personal appearances made by
15 Mr. O'Rourke on television programming?

16 A Yes, I have.

17 Q Can you name some of the shows?

18 A He has done -- typically, when Michael goes to
19 do a show around the country, our PR agency would
20 typically try to get him onto the morning TV shows where
21 they will interview him and he might cut the hair of the
22 anchor or someone at the show.

23 He has been on -- is it called "The Other Half"?
24 I am trying to remember the name of that show. I know he
25 appeared two or three times on that TV show. And the

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1 name escapes me right now.

2 Again, Donna can give you the complete list
3 because that's what she does.

4 Q In the course of these appearances, is there any
5 reference made to the Sexy Hair mark?

6 A Absolutely.

7 Q With respect to product placement, are you
8 familiar in connection with which television programs or
9 movies Sexy Hair brand products have been placed?

10 A Again, Donna can give you the list. I can give
11 you some that I recall, but if you want a more complete
12 list, Donna is the right person to ask that question.

13 Q Which are the ones that you recall?

14 A The Tonight Show with Jay Leno. Let me try and
15 get this right. "Queer Eye For the Straight Guy." I
16 believe it's something like that. There have been a few
17 other movies, but I can't recall the name right now.

18 Q Who is responsible at Sexy Hair Concepts for
19 having products placed on a program like "Queer Eye for
20 the Straight Guy"?

21 A Typically, that goes through our PR company,
22 M. Craig & Associates. Donna has an assistant who
23 handles PR internally.

24 Q What is the purpose of having a product placed
25 on a program like "Queer Eye for the Straight Guy"?

1 into both the retail and professional channels?

2 A Yes, there are.

3 Q Can you name some of those companies?

4 A L'Oreal, for example, would have a professional
5 line and a retail line. Wella will have a professional
6 line and retail line.

7 But then you also get a number of the more
8 popular brands that have the same diversion issues we do
9 where you find them in the mass market as well as the
10 professional.

11 Q In relationship to competitors such as L'Oreal
12 and Wella, where do the Sexy Hair products fall in terms
13 of pricing?

14 A Well, if we can distinguish between the
15 professional because you get the professional brands
16 versus the retail brands. As far as the professional
17 brands go, we are about a mid-priced brand.

18 The professional, I am talking about our
19 competitors such as TG and Redkin and Sebastian. Those
20 types of companies.

21 Q Do you take any steps to monitor the activities
22 of your competitors such as TG, Sebastian and Redkin?

23 A We are not a very big industry, so we have a
24 fairly good feel of what is going on in the market place.
25 Plus, we often have the same distributor.

1 Q Are you aware of any companies other than
2 Victoria's Secret who are using "Sexy" as a brand or
3 component of a brand name in connection with any hair
4 care products?

5 A I am not aware of any that are actually using
6 it. I know there are some applications for use that have
7 come to my attention, but I am not aware of any that are
8 out there in the market place.

9 Q In connection with the applications that have
10 come to your attention, has Sexy Hair Concepts taken any
11 steps to police and protect the Sexy Hair brand in the
12 market place or the trademark office?

13 A Absolutely.

14 Q Who decides if action should be taken?

15 A It's usually between me and our attorney. You
16 in this case.

17 Q I would like to show you a number of files and
18 ask if these are representative of some of the policing
19 efforts that have been undertaken in connection with the
20 Sexy Hair brand.

21 I show you a set of documents that have been
22 produced under Production Numbers SHC 1226 through 1225.

23 MR. COLUCCI: 1226 to where?

24 MS. JACOBS-MEADWAY: Sorry. These are in
25 chronological order rather than production order. So I

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1 will read off the numbers.

2 So the record is clear, these relate to a
3 trademark application of Performance Brands, Inc., and
4 the Production Numbers are 1226 through 1227, 1224
5 through 1225, 1156 to 1175, 1194 through 1212, 1176
6 through 1193, 1154 to 1155, 1149 through 1153, 1151 and
7 1152, 1142 through 1148, 1129 through 1106.

8 MR. COLUCCI: Say that again, please? 1129
9 to --

10 MS. JACOBS-MEADWAY: Actually, it continues
11 through --

12 MR. COLUCCI: 1141; right?

13 MS. JACOBS-MEADWAY: 1128 and 93 through 96.

14 MR. COLUCCI: Off the record.

15 (Off the record.)

16 BY MS. JACOBS-MEADWAY:

17 Q Mr. Stiller, do you recall an opposition to
18 registration of "Sexy Bath and Body" by Performance
19 Brands, Inc.?

20 A Yes, I do.

21 Q Directing your attention to the page which bears
22 Production Number SHC 1141.

23 A Yes.

24 Q Did Ecoly International secure an assignment of
25 the "Sexy Bath and Body" marked from Performance Brands